

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Proposed Policies and Programs
Governing Energy Efficiency, Low-Income
Assistance, Renewable Energy and Research
Development and Demonstration

Rulemaking 98-07-037
(Filed July 23, 1998)

**ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING
ELIGIBILITY FOR COMPENSATION AWARDS**

Pursuant to Public Utilities Code (Pub. Util. Code) Sections 1801-1812¹, Housing California filed a Notice of Intent (NOI) to claim compensation for its participation in this proceeding. This ruling finds that Housing California is eligible to file a claim for compensation.

Intervenor Compensation

The intervenor compensation program set forth in Pub. Util. Code §§ 1801-1812 allows public utility customers to receive compensation for their participation in Commission proceedings. To receive an award, a customer must make a substantial contribution to the Commission's decision or order and demonstrate that participation without an award would pose a significant financial hardship.²

¹ All statutory references are to the Public Utilities Code unless otherwise stated.

² Section 1803.

Section 1804 requires a customer who intends to seek an award to file and serve within 30 days after the prehearing conference a NOI. Section 1804(a) and the Commission's Rules of Practice and Procedure, Rule 76.74 allow the Administrative Law Judge (ALJ) to establish a deadline for filing when no prehearing conference is scheduled. The NOI must include a statement of the nature and extent of the customer's planned participation, and an itemized estimate of the compensation the customer expects to request. The customer's showing of significant financial hardship may be included with the NOI or may be included with the request for award after the Commission's final decision in the proceeding.

If the NOI includes the customer's financial hardship showing, the ALJ in consultation with the assigned commissioner must issue within 30 days a preliminary ruling addressing whether the customer will be eligible for an award of compensation.³ To determine eligibility, two questions must be addressed: whether the intervenor is a customer as defined in Section 1804(b), and whether participation will present a significant financial hardship.⁴

Timeliness

The Commission issued an order in this phase of the proceeding on June 14, 2001, seeking written comments in lieu of a holding a prehearing conference. The Commission's order sought comments on questions relating to the feasibility of instituting automatic enrollment of electricity and gas customers into the California Alternate Rates for Energy ("CARE") and Low-Income Energy

³ Section 1804(b)(1).

⁴ D.98-04-059, Conclusion of Law #5.

Efficiency programs when they qualify for other low-income assistance programs.

On June 29, 2001, Housing California concurrently petitioned to intervene and file comments in response to the Commission's June 14th order requesting comments. On that date, Housing California also filed its NOI and served a copy on all parties of record.

Thus, Housing California has timely filed a NOI in this proceeding.

Responses to the NOI

Responses are due within 15 days after the NOI is filed (§ 1804(a)(2)(C)).

No responses were filed.

Qualification as Customer

Section 1802(b) provides in relevant part that:

“Customer means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers....”

Decision (D.) 86-05-007 dated May 7, 1986, interpreted this statutory definition and clarified the three customer categories set forth in the statute. As summarized by the Commission in D.98-04-059, Category 1 is an actual customer who represents more than his own narrow self-interest; a self-appointed representative of other customers or subscribers of the utility. A Category 2 customer is a representative who has been authorized by actual customers to represent them. A Category 3 customer is a formally organized group

authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

A party seeking eligibility to claim compensation is required to state how it meets the definition of a customer and, for Category 3 customers, point out where in the organization's articles or bylaws it is authorized to represent the interests of residential customers. Groups should indicate in the NOI the percentage of their membership that are residential ratepayers. Similarly, a Category 2 customer is required to identify the residential customer or customers that authorize him or her to represent that customer. (D.98-04-059, mimeo. pp. 29-30, 83, 88.)

Housing California classifies itself as a non-profit corporation, registered with the State of California Secretary of State as Reg. No.A0512540, authorized pursuant to its articles of incorporation to represent and advocate the interests of its members. Housing California is a statewide coalition of urban and rural non-profit housing developers and homeless-services providers. Housing California represents that most of its 1,400 members are residential ratepayers of Pacific Gas and Electric Company, Southern California Edison, or San Diego Gas and Electric Company.

To substantiate its claim, Housing California references its articles of incorporation. Article II of Housing California's bylaws state that the purpose of the corporation is to, among other things:

“Serve as a catalytic agent in the development of resources and to provide assistance to organizations assisting homeless people and/or promoting the development of decent affordable housing for low-income households enabling them to acquire Federal, State, local and private funds for implementation of programs planned for or by homeless persons or low-income households.”

Housing California qualifies as a Category 3 customer as defined by § 1802(b) and has satisfied the criteria set forth in D.98-04-059.

Planned Participation

Housing California identified its planned participation in this proceeding, as required by § 1804(a)(2)(A)(i). Housing California's participation in this proceeding will include the filing of comments, response comments, (if necessary) submitting legal, oral and written presentations that may be helpful to the Commission. Housing California represents that its goal in this proceeding is to ensure that all eligible customers receive CARE benefits and ensure responsiveness to the needs of low-income renters. (NOI, p. 4.)

Housing California intends to avoid undue duplication wherever practicable by tailoring its work to support and compliment that of other low-income community participants. The Commission will consider the issue of duplication of effort when it reviews the subsequent request for compensation. In order to minimize such duplication, we encourage Housing California to coordinate with other parties in developing its comments and other filings in this proceeding, to the extent possible.

We find that Housing California's planned participation, as described in its NOI, is necessary for a fair determination of the proceeding.

Estimated Compensation Request

Housing California submitted an itemized estimate of the compensation it expects to request for its participation in this proceeding, pursuant to § 1804(a)(2) (A)(ii). Housing California will provide time records, expense records, and justification for its hourly rates in a request for an award of compensation, if it eventually files one. The total amount of its estimated request is **\$87,300**, as detailed below.

Executive Director Michael Herald (100 hours @ \$250/hr):	\$25,000
Legislative Analyst Julie Snyder (100 hours @ \$150/hr):	15,000
Director of Advocacy Douglas Shoemaker (80 hours @ \$150/hr):	12,000
Senior Partner Michael Strumwasser (28 hours @ \$475/hr):	13,300
Associate Johanna Shargel (42 hours @ \$250/hr):	10,500
Expert witness fees (30 hours @ \$250/hr)	7,500
Other Expenses	4,000
Total Projected Budget	\$87,300

Housing California has filed a reasonable estimate of its expected compensation in this proceeding, pursuant to § 1804(a)(2)(A)(ii).

Significant Financial Hardship

Pub Util. Code § 1803 authorizes the Commission to award reasonable advocate's and expert witness fees and related costs only to customers who make a substantial contribution to the Commission's decision and for whom participation or intervention in a proceeding without an award of fees imposes a significant financial hardship. The Commission has clarified that the financial hardship test varies by type of customer. (See D.98-04-059, mimeo. pp. 33-37, 89.)

In summary, Category 1 and, in part, Category 2 customers must show by providing their own financial information (which may be filed under seal) that they cannot afford, without undue hardship, to pay the cost of participation. Category 3 customers must show that the economic interest of individual members is small in comparison to the cost of participation. For Category 2 customers where representation is authorized to represent a group of customers, the comparison test will not be routinely applied. The question of which test to apply will be determined from the form of customer asserted and customer's specific financial hardship showing.

Pub. Util. Code § 1804(a)(2)(B) allows the customer to include with the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included with the request for compensation submitted pursuant to § 1804(c). If a customer has received a finding of significant financial hardship in any proceeding, § 1804(b)(1) creates a rebuttable presumption that the customer is eligible for compensation in other proceedings which commence within one year of the date of the finding.

Housing California seeks a finding that its participation in this proceeding will pose a significant financial hardship. Housing California represents that its discretionary budget available for use in this proceeding is less than the estimated cost of participation. Additionally, Housing California states that while it may be impossible to calculate the financial benefits of the low-income assistance programs that may accrue to low-income housing providers or tenants, that the cost of effective participation far outweighs the economic interest of any member. (NOI p. 6.)

We find that participation in this proceeding would pose a financial hardship for Housing California. Today's ruling goes only to the eligibility of Housing California to claim compensation. It does not address the final merits of the claim, which the Commission will address after Housing California has documented expenses in greater detail and demonstrated a substantial contribution to the proceeding.

IT IS RULED that:

1. Housing California timely filed a Notice of Intent for compensation in this proceeding.
2. Housing California is a Category 3 customer.

3. Housing California has fulfilled the requirements of Public Utilities Code Section 1804(a)(2)(A).

4. Housing California has demonstrated that it will face a significant financial hardship in this proceeding.

5. Housing California is eligible to seek an award of compensation for a substantial contribution in this proceeding.

Dated January 3, 2002, at San Francisco, California.

/s/ MEG GOTTSTEIN by ang

Meg Gottstein

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Eligibility for Compensation Awards on all parties of record in this proceeding or their attorneys of record.

Dated January 3, 2002, at San Francisco, California.

/s/ JACQUELINE GORZUCH
Jacqueline Gorzuch

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

